IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

NAG SINGH V/S STATE & Ors.

S.B.CIVIL WRIT No. 3397 of 1990
UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA.

Date of order : 25th January, 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Dr. R.S. Dev Rajpurohit, for the petitioner.
Mr. O.P.Boob, A.G.A., for the respondents.

BY THE COURT:

By this writ petition the petitioner seeks to challenge the order of the Board of Revenue, being Annexure-14, and that of the Collector Annexure-12, so also the order of the State Government being Annexure-8.

The facts of the case are, that the proceedings were initiated against the petitioner for determination of the ceiling area applicable to him, and for resumption of surplus land, and in that regard Ceiling Case no. 503/68 was registered. It was alleged that another ceiling

proceedings also happened to be commenced against the petitioner vide Ceiling Case no. 192/73, and vide order dt. 9.10.74(Annexure-7), the learned S.D.O. found, that the petitioner's family consisted of seven members, and was entitled to hold 612 Bighas and 10 Biswas land, and after considering the land held, ordered 3250 Bighas of land to be resumed.

Thereafter came to be passed the order Annexure-8 by the State Government under Section 15 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, hereafter referred to as the new Act, and it was considered, that the proceedings were concluded against the petitioner under the old Ceiling Law being Chapter III-B of the Rajasthan Tenancy Act, and thereafter only the proceedings could be taken under the new Act, which has not been done by the S.D.O., and that the S.D.O. was in error in considering 7 persons to be coparceners in total area of land measuring 585.5. In these circumstances notice was given to the petitioner to show cause as to why the matter be not reopened, but nobody appeared. Therefore, it was held, that since the proceedings vide Case No. 503/68 were pending, and that case has not been decided by the S.D.O. in accordance with the Chapter III-B of the Act, and rather ceiling proceedings have been decided in Case No. 192/73, while the S.D.O. should have decided earlier proceedings first, and should thereafter have enquired the matter in

accordance with the new Act, and therefore, the matter was reopened, and it was directed, that the Collector should reopen the matter, and decide the matter afresh, under the new Act. Accordingly the proceedings were reopened, being case no. 325 of 1978, and therein the petitioner submitted his version vide Annexure-9, and the learned Collector vide Annexure-12 decided the matter, and concluded, that the petitioner's family is entitled to retain 1400 Bigha of land, and order was passed for resumption of 3076 Bigha 14 Biswa of Barani III and 1791 Bighas 14 Biswa of Barani IV, and the petitioner was directed to submit options of the land to be surrendered. It appears that in passing this order Annexure-12, the learned Collector mentioned the case no. being 325/78 so also 503/68. Be that as it may. Against this order the petitioner filed appeal, and the learned Board of Revenue, vide order Annexure-14, partly allowed the appeal, and the appellant was held entitled to retain 1540 Bighas of Barani IV and therefore, the order of resumption of 1791 Bighas 14 Biswa Barani IV was reduced to 1651 Bigha 14 Biswa of Barani IV. This was done as the learned Board of Revenue held, that the Collector was in error in concluding the appellant's family to be consisting of 9 members, and it was found by the learned Board to be consisting of 10 members, inasmuch as, exclusion of Bhakhar Singh was not accepted.

It may be noticed here that in Annexure-9, the petitioner had given out the details of the family members, being members of the Hindu Undivided family, treating them to be coparceners, and claiming recognition of certain transfers.

Assailing the impugned judgments, it was contended, that Annexure-7 was passed under the new Act, while the proceedings against the petitioner were pending under the old Act, and therefore, vide Annexure-8 it was directed, that in the first instance determination of ceiling area should be made under the old Act, and then it should be made under the new Act, and in the event of such determination, whichever determination is found beneficial to the State Government should be applied, while under the old Act, the proceedings could be undertaken only by the S.D.O., and not by the Collector, as Collector was a persona designeta under the new Act, and therefore, the Collector had no jurisdiction to decide the old case no. 503/68, apart from the fact, that the Collector has not complied with the directions contained in Annexure-8, and has not even purported to decide the matter under the old Act in the first instance, and then under the new Act, rather has straightway decided under the new Act only, thus, the order is bad.

The other submission made is, that under the old Act the cut off date was prescribed, being 1.4.1966, on which date the surplus land vested in the State Government, while vide subsequent notification, transfers made upto 31.12.1969 were recognised, meaning thereby that the date already fixed, being 1.4.1966, as date of vesting of surplus land in the State Government was not sacrosanct, and some date on or after 31.12.1969 was required to be specified, as a date, on which surplus land stands vested in the State, that having not been done, it cannot be said, that till determination of surplus land is made, the land at all vested in the State Government, and since on the enactment of new Ceiling Act, the old provisions contained in Chapter III-B stood repealed, no determination can be made under the old law. Reliance was placed on a Full Bench judgment of this Court in Banshidhar Vs. State, reported in AIR 1977 Rajasthan-46, which has been affirmed by Hon'ble the Supreme Court.

Then, assailing the impugned judgments Annexure-12 and 14, on merits, it was contended, that under the new Act, the first step required to be taken was, issuance of draft statement as contemplated by Section 12 of the new Act, and in the present case admittedly no such draft statement has been prepared or served, the entire proceedings are vitiated, and that the learned Board of Revenue was in error in not accepting the contention of the

petitioner. Reliance was placed on the judgment of this Court, in Rakha Singh Vs. State of Rajasthan, reported in 1984 RLW-421. The other submission made is, that the provisions of Rule 17(4) of the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963, have not been given effect to, while making determination, inasmuch as since the petitioner was Jagirdar, whose Jagir has been resumed, and the Khatedari rights have been conferred consequent upon resumption, and thereby abolishing the impartible nature of the estate, with the result, that the land is deemed to be held by the petitioner as Karta of Hindu Undivided Family, and every member of the family had the right therein by birth, and therefore, he is deemed to be dependent on the land falling in his share, and in this regard according to Rule 17(4), the share of the family, or of an individual person, in the land held by the Hindu Undivided Family, is to be deemed to be the extent of land, which in case such share is held on the appointed date, would have been allotted to such a member, had such land been partitioned or divided, as the case may be, on such date. Consequently out of the land held in the name of the petitioner, respective extent of the land should have been taken to be belonging to each of the coparceners of the Hindu Undivided Family, and thereafter only the determination of ceiling area should have been made, regarding the land falling to the share of the petitioner, and if that were done, the land held by the petitioner did

not exceed the permissible ceiling area, the impugned order is bad. Reliance in this regard was placed on the judgment of this Court, in Gopal Singh Vs. State of Rajasthan, reported in 1983 RLW-475, Smt. Raj Rani Vs. Chief Settlement Commissioner Delhi, reported in (1984)3 SCR-763, Amb Singh Vs. Sub Divisional Officer, reported in 1986(1) WLN-418, and Jagannath Vs. Sub Divisional Officer, reported in 1985 RLW-106.

I may observe here, that no submission was made for the purpose of assailing the order Annexure-8, though in the writ petition it is also prayed to be quashed. In that view of the matter, I need not detain on the question of correctness of the order Annexure-8.

On the other hand, learned counsel for the state supported the impugned judgment. It was submitted, that the order Annexure-12 has been passed under the new Act, and the Board of Revenue has also considered it accordingly. Then it was submitted, that in Annexure-9 the petitioner has no-where submitted, that the other members of his family are not dependent on him, while according to the definition of term 'family' the dependent children are to be included in the family. It was then submitted, that since quantum of land held by the petitioner is not in dispute, non submission, or service of draft statement is, in the circumstances of the present case, of no adverse

consequence, as no prejudice has been suffered, and that the impugned judgments do not require any interference.

I have considered the submissions, and have gone through the record, as was requisitioned at the conclusion of the arguments of both the learned counsels.

Taking up the first contention, about the requirement of the proceedings to be decided, in the first instance under the old Act, and then under the new Act, and also taking up the judgment of the Full Bench of this Court in Banshidhar’s case; true it is that in Banshidhar's case, it has been held, that the rights and liabilities created under the old law having been effected by the enactment of new law, therefore, all cases initiated under old law and pending before competent authority must be disposed of in the manner, and under the provisions of the old law. But then, that is not the end of the matter, inasmuch as, in Annex.8 this aspect has been considered, and the order Annex.7 has been reopened, precisely on this ground, that the proceedings under the old Act should have been decided first, and thereafter determination under the new Act should have been made. But then, what is significant to note is, that in the operative part of the order Annex.8, it has not been so directed, that the determination should, in the first instance be made under the old law, and then under the new law. Learned counsel for the petitioner

strenuously submitted, that in Annex.8 the Collector was directed to decide the ceiling proceedings under the old act, in the first instance, and then under the new Act, but then, despite reading Annex.8, not only myself, but also with the assistance of the learned counsel for both the parties as well, I could not find out any such directions to be contained in that order, rather this was only a consideration for ordering reopening. And as noticed above, since no submissions have been made to assail Annex.8, it is not required of me to go into the question, as to what should have been the direction, and the matter is required to be considered, from the stand point, as to what is the direction contained in Annex.8. This is one aspect of the matter. The other aspect of the matter is, that even in Banshidhar's case, this was observed, also keeping in view, that as many as 8494 cases had been decided after commencement of the new Act, in accordance with the provisions of old law, and surplus land to the extent of 295812 acres has been taken from the landholders, and has been allotted, and only 166 cases under the old law are pending. Therefore, if on technical grounds a different view is taken in respect of the pending cases, then it will create an upheaval in the State, and the rights created in favour of the new allotees in the surplus lands shall have to be disturbed, and thousands of the landless tenants will be affected if the technical argument is accepted. It is required to be grasped, that the principle was propounded,

keeping in mind, rather in the background of, above significant consideration. This is another aspect of the matter. The third aspect of the matter is, that it is not in dispute, that irrespective of the question as to whether the determination is to be made under the old law, or under the new law, whichever is beneficial to the State Government is to be upheld, and not whichever is beneficial to the landholder. In that view of the matter, when the determination is made under the new Act vide Annex.8, if a determination is beneficial to the petitioner, the petitioner obviously can have no grievance, and if it is detrimental to the petitioner, as compared to the State, i.e. the determination were to be made under the old law, even in that event, such eventuality is contemplated by law, and therefore, it does not furnish any ground to the petitioner to raise any grievance. Then the fourth aspect of the matter is, as contended by the learned counsel for the petitioner, that since the old law has been repealed, now proceedings cannot be taken under the old law. Thus, considered from any standpoint, the contention raised cannot be accepted. This, above finding also disposes of the second submission made by the learned counsel for the petitioner, about fixing of the cut off dates for vesting of the land, and fixing of another date, upto which the transfers are to be recognised.

Then I take the submission made on the merits of the correctness of the impugned judgments Annex.12 and 14. As noticed above, the first objection raised was, about non-submission, and non-service, of draft statement, as contemplated by Section 12. In this regard a look at Annex.12 shows, that no objection in this regard has been taken before the learned Collector. Then the objection was raised before the learned Board of Revenue in the memo of appeal, but then it does not appear, that this contention was argued before the learned Board of Revenue, and in the present writ petition also, it is not the contention, that the contention was argued before the learned Board of Revenue and was not considered. It is a different story, that even if that were the situation, the remedy would have been something else, as laid down by Hon'ble the Supreme Court in Bank of Bihar Vs. Mahabir Lal & Ors., reported in AIR 1964 SC 377. Then instead of standing to ceremonies of technicalities, even if I were to consider the objection, on its own merits, taking the contention to be pure question of law, even then, a look at the provisions of Section 12, as they existed at the time of passing of the order Annex.8 and 12 shows, that the Section contained a proviso, which reads as under:-

> "Provided that if the Authorised Officer is satisfied that the return is correct and complete, he shall, instead of preparing a draft statement, proceed under section 13 to declare the ceiling area applicable to the person concerned and the surplus land held by him

> and shall prepare, serve and publish a final statement as provided therein"

Since the quantum of land held by the petitioner is not in controversy, in view of the proviso noticed above, the order cannot be said to be vitiated for want of draft statement, and its service on the petitioner. So far as the judgment of this Court in Rakha Singh's case is concerned, in that case, the orders were passed by the authorised officer before introduction of the proviso, and this aspect has been considered by this Court in Rakha Singh's case in para 7. Thus, this contention also does not hold good.

Then I take the contention raised on the anvil of Rule 17(4), and the judgments of this Court in the cases of Gopal Singh, Amb Singh and Jagannath, and that of Hon'ble the Supreme Court in Smt. Raj Rani's case. In Smt. Raj Rani's case the Hon'ble Supreme Court was considering the matter in a different context, and all that was held was, that the property in question was Mitakshara coparcenary property, and the interest of the deceased was required to be determined in accordance with the provisions of Explanation I of Section 6 of the Hindu Succession Act. There is no dispute on this legal proposition. Then so far Gopal Singh's case is concerned, the principle propounded therein, about the nature of the land to be becoming that

of the land held by the Karta of Hindu undivided family is also not in dispute, the question is, as to what is the effect of the three judgments in Gopal Singh's case, Amb Singh and Jagannath's case, on the controversy at hand.

So far Rule 17(4)is concerned, it is a different story, that this finds place in the Rules of 1963, which were framed for the purpose of Chapter III-B of the old law, with which we are not concerned, in view of Annex.8 and 12, as the determination has been made under the new law. Then under the new law also, there is a provision corresponding to the then Rule 17(4), and that is comprised in Section 5, whereunder also, in case of person being member of joint Hindu family, the share of the member of such family, in the land held by such member of the joint Hindu Family is to be taken into account.

But the question is, as to whether on that count, all the members of the family, as detailed in Annex.9, are treated to be independent units, albeit families, and then the determination of ceiling area applicable to the petitioner is to be made, treating the land held by the petitioner to be the land, to the extent, as falling to his share by virtue of the above provisions of Section 5 of the new Act; and in my humble opinion, even in view of the above three judgments, and in view of the provisions of new Ceiling Act, the answer has to be in the negative.

It is different story that the definition of the term "family", as contained in the old Act, and the new Act, has undergone a sea change, inasmuch as in the old law under Section 30B, the family was contemplated to be consisting of husband and wife, their children and grand-children being dependent on them, and the widowed mother of the husband so dependent. While under the new Act under Section 2(f) the definition of the term "family" is as under:-

> "2(f) "family" shall mean a family consisting of husband, wife and their children but excluding married minor daughter;.."

Thus, in the first instance, the requirement of the children to be included in the family, under the old law did require, that the children and grandchildren should be dependent, as against which, this requirement has been given a complete go bye under the new law. Since an argument was also made by the learned counsel for the petitioner, that since the land is to be treated as coparcenary property, each coparcener is entitled to land to the extent of his respective share, he cannot be deemed to be dependent on the father, rather he was dependent on the land itself, and therefore, he could not be included as a member of the family of the petitioner. In this regard I may observe, that since under the new Act the definition of

family has undergone a sea change, and the requirement of dependency is no more there: the wife and children, irrespective of their being dependent or not, have to be included in the family of the petitioner.

Then even in Gopal Singh's case, on which strong reliance was placed by the learned counsel for the petitioner, on facts, it was found in para-12, that Gopal Singh had 4 sons, out of 4, 3 sons viz., Daulat Singh, Surendar Singh and Brijraj Singh had separated, by way of partition, and Bhagwant Singh remained with his father, and in those facts it was held, that the extent of area of land, which would have fallen to share of Gopal Singh, his wife and dependent son, Bhagwant Singh, could have been clubbed together under Rule 17(1), for determining the ceiling area applicable to the family, of which Gopal Singh was Karta, and in this background, it was held, that after the exclusion of the shares of 3 sons (who had separated), if a notional partition would have taken place on the appointed date, the land that would have been available for determining the ceiling area applicable to Gopal Singh was considered. In the present case, it is nowhere the case of the petitioner, that any of his sons had partitioned, or had separated, nor is it any pleading in Annex.9, that any of them were not dependent on him. Similarly in Jagannath's case also, the question that was considered was, that the minor dependent son would be member of family, and since in

that particular case, the question of dependency was gone by presumption, the matter was remanded for deciding the question, as to whether they were dependent or not. In Amb Singh's case the question was about the effect of partition, which is not relevant for the present controversy. Thus, even under the old law, may be that under Rule 17(4) the notional share was required to be considered, to be belonging to the person concerned, but then, by virtue of Rule 17(1), that extent of land was again required to be clubbed, as the land held by the family, and entitlement of the person concerned, about the extent of land permissible to be retained, was to be determined, on the basis of numbers of members of the family. As against this, now under the new law, definition of term “family” is entirely different, and husband, wife and children are included in the “family” and therefore, even the land notionally held by them, by virtue of Section 5 of the new Act, is required to be clubbed together as the land held by the “family”, and then determination is to be made. In that view of the matter, it cannot be said, that determination made by learned Board of Revenue is wrong, on account of having been made without considering the notional share of each coparcener of the Hindu Undivided Family. Thus, I do not find any force in this contention as well.

It may be observed, that a look at the declaration filed by the petitioner, as is available on record at page-A-6 shows that therein he had shown 11 members of the family, which included a maid servant, while the learned Board of Revenue after excluding maid servant, has taken the number of members of the family to be 10, which were taken by the learned Collector to be 9, then as appears from the Schedule "C" also produced by the petitioner on record of the SDO, available at page A-7, that the petitioner had shown the number of the family members including the maid servant to be 11. Thus, excluding maid servant, it cannot be said, that the learned Board of Revenue was in error in taking 10 persons to be members of the petitioner's family. A look at this Schedule-C shows that the members shown are the petitioner, his wife, widowed mother and Sant Kanwar daughter, which clearly fall within definition of family as given in Section 2(f) of the new Act.

Thus, the net result of the aforesaid discussion is, that the impugned orders do not suffer from any error, requiring interference in writ jurisdiction.

The writ petition is, therefore, dismissed. Parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/